

Decision 02-04-053 April 22, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M), a California Corporation, and Jon Frazier and Katherine Frazier for an Order Authorizing the Former to Lease to the Latter a Certain Parcel of Land in Amador County Pursuant to Public Utilities Code Section 851.

Application 01-03-022
(Filed March 14, 2001)

O P I N I O N

1. Summary

Pacific Gas and Electric Company (PG&E) seeks authority under Pub. Util. Code § 851 to lease 156 acres of land in Amador County to Jon and Katherine J. Frazier for the operation of a commercial resort. The property has been used as a commercial resort under lease or license from PG&E since 1965. The application is unopposed. The application is granted.

2. Procedural History

The application was filed on March 14, 2001 and was noticed in the Daily Calendar on March 16, 2001. In Resolution ALJ 176-3060, dated March 27, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. It follows that a public hearing is not required, nor is it necessary to alter the preliminary determinations made in Resolution ALJ 176-2997.

3. Background

The property surrounds PG&E's hydroelectric facilities at Lower Bear Reservoir. The property has been used as a commercial resort, commonly known as the Bear River Lake Resort, since 1965. PG&E acquired the property from Brown Brothers Lumber Company in 1930. Total original cost of the property included in PG&E's rate base is \$336.

In 1965, PG&E entered into a 30-year lease with James D. Jones for use of the property as a resort. The lease was assigned to the resort's new owner, Senter C. Gunter, in 1978, and he sold the resort to the Fraziers in 1995. The Fraziers began negotiations with PG&E on terms of a lease to replace the license under which they now operate.

4. Terms of Lease

PG&E states that the property on which the resort is operated is not currently necessary or useful for utility operations. The company states that, consistent with previous leases of utility property, the annual rental charge will be treated as miscellaneous operating revenue and will be credited to PG&E's ratepayers.

The rental charge for the property will be 3.45% of gross receipts from the effective date of the lease to December 31 of that year. Thereafter, the resort owners will pay \$4,000 as a minimum annual rent for the coming calendar year, with final rent set at 3.45% of gross receipts less credit for the minimum rent paid in advance. The annual rental will increase to 7% of gross receipts for the period January 1, 2007 to December 31, 2015. A copy of the lease agreement is attached to the application as Exhibit A.

As part of the lease, the lessees agree to do nothing that would interfere with PG&E's operation of its hydroelectric facility, and PG&E reserves the right

to terminate the lease if this Commission or other appropriate agency requires use of the property for utility purposes.

PG&E states that, consistent with previous leases of utility property, the annual rental charge will be treated as miscellaneous operating revenue and credit to PG&E's ratepayers. In earlier cases, this has been accomplished by booking the revenue to PG&E revenue account 454 (454010) (Rent from Electric Property). PG&E states that the lease will generate revenue benefiting ratepayers without sacrifice to PG&E's service.

5. Environmental Consideration

PG&E states that the proposed lease is not an activity subject to the California Environmental Quality Act (CEQA), Pub. Resources Code §§ 21000-21176, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines §§ 15060(c)(2), 15061(b)(3).) The property has been used as a commercial resort since 1965 and this lease will not change that use or lead to future construction.

PG&E states that the tenant now operates a commercial resort on the property subject to a revocable license agreement, and that this is the same use the tenant will make of the property upon completion of the lease. Neither PG&E nor tenant seeks authority from the Commission to change the existing uses of the property.

6. Service on Other Agencies

In Ordering Paragraph 7 of Decision 99-04-015 and D.99-04-022, the Commission directed PG&E to serve "any future Public Utilities Code Section 851 applications regarding land and/or hydroelectric facilities on local jurisdictions, such as cities, counties, special use districts, and federal and state resource agencies." Accordingly, PG&E served its application on the County of

Amador, the Commission's Office of Ratepayer Advocates and Energy Division, the California Resources Agency, the California Environmental Protection Agency, the U.S. Environmental Protection Agency, and the U.S. Department of the Interior. None of these agencies have filed comments or objections to the proposed lease.

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment on the proposed decision is waived, pursuant to Pub. Util. Code § 311(g)(2).

Findings of Fact

1. PG&E seeks to lease 156 acres of land in Amador County to Jon and Katherine J. Frazier for the operation of a commercial resort.
2. The property surrounds PG&E's hydroelectric facilities at Lower Bear Reservoir and has been used as a commercial resort since 1965.
3. The Fraziers have operated the resort since 1995 under terms of a revocable license from PG&E.
4. The rental charge under the proposed lease will be 3.45% of gross receipts annually, increasing to 7% of gross receipts for the period 2007 through 2015.
5. As part of the lease, the lessees agree to do nothing that would interfere with PG&E's operation of its hydroelectric facility.
6. The proposed lease is not an activity subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.
7. The application is unopposed.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company for an order authorizing it to lease 156 acres of land in Amador County to Jon and Katherine Frazier, as more fully described in the proposed lease attached to the application as Exhibit A, is approved.

2. Application 01-03-022 is closed.

This order is effective today.

Dated April 22, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners